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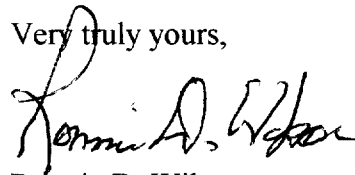
Re: In the Matter of Ronald Brasher, et al:
EB Docket No.: 00-156 before the Federal Communications Commission

Dear Secretary:

Please find enclosed an original and seven (7) copies of the Proposed Findings of Fact and Conclusions of Law on behalf of David and Diane Brasher in the above-referenced matter. Please return a file-stamped copy to me in the enclosed self-addressed envelope.

All parties and the Honorable Judge Steinberg are being served with copies of same via First Class Mail on this date.

Very truly yours,



Ronnie D. Wilson
Attorney for David and Diane Brasher

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Dated: September 10, 2001

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I. INTRODUCTION

1. This proceeding came on for hearing before the Honorable Judge Arthur I. Steinberg on February 26, 2001 and evidence was heard until the record was closed on March 9, 2001. In Judge Steinberg's Memorandum Opinion and Order, released October 26, 2000 (the "MOO") he identified the issues for the hearing and designated them as issues a through f plus an issue concerning Order of Forfeiture.
2. This submission, on behalf of David and Diane, will only address the evidence concerning the issues set forth in the MOO that apply to them. It should be noted that Diane is not a captioned licensee nor captioned party to this proceeding and is involved herein only because of her status as an officer of DLB Enterprises, Inc. (hereinafter "Metroplex").

II. FINDINGS OF FACT

3. Neither David nor Diane was a Director of Metroplex at any time, but both were Officers of Metroplex, at all times relevant to this proceeding. This finding is supported by the testimony of Ron Brasher (hereinafter "Ron"). [TR. p. 29, Lines 15-20] and Pat Brasher (hereinafter "Pat"). [TR. p. 754, Lines 15-20].
4. Neither David nor Diane were involved in the filing of the license application and/or assignment in the name of O. C. Brasher. This finding is supported by the following evidence: Ron told the Court that within the management of Metroplex, he was responsible for all licensing and expanding issues and had the principal responsibility for licensing. [TR. p. 530, Line 9-Line 4 of p. 532]. Ron testified that

David and Diane had nothing to do with applying for licenses in the names of deceased persons or the Sumpters, no connection with them whatsoever [TR. p. 618, Lines 7-15] and Ron testified that David came to work for Metroplex in 1997 and David had little or no input into the business prior to that year even though he was an officer of it. [TR. p. 35, Lines 3-9]. Ron also testified that neither David nor Diane had any involvement with John Black regarding license applications. [TR. p. 97, Lines 23-25] Pat told the Court that Brasher's bank account checks that were signed by Diane were only in Diane's name. [TR. p. 792, Lines 23-25]. Pat testified that neither David nor Diane signed the checks on pages 7 and 8 of the FCC's Exhibit 68. [TR. p. 803, Lines 13-22]. Pat also testified that Diane was never involved in discussions at Metroplex about how to submit FCC license applications. [TR. p. 891, Lines 21-23]. Pat further testified that Diane did not work at Metroplex in the summer and early fall of 1996 and her involvement in Metroplex during that time was her administration and office manager duties. [TR. p. 892, Lines 12-Line 2 of p. 894 and p. 898, Lines 4-17]. Carolyn Sue Lutz (hereafter "Sue") told this Court that Diane was on leave of absence from Metroplex from May of 1996 for about four to five months. [TR. p. 1285, Lines 2-22]. Sue told this Court that David came to work for Metroplex in 1997 and that she had no involvement with him during her first term of employment and to her knowledge David had no direct involvement with Metroplex during her first term of employment. [TR. p. 1286, Line 9-Line 7 p. 1287]. Sue testified that in the summer of 1996 Diane's only involvement in the business of Metroplex was the payroll. [TR. p. 1302, Line 2-6].

Diane told this Court that she was on leave of absence from Metroplex in the summer of 1996 and the only work she did for Metroplex during that time was payroll and maybe some accounts receivable. [TR. p. 1545, Line 19-Line 21 of p. 1546 and p. 1547, Lines 4–6]. Diane testified that she had no responsibilities regarding the filing of FCC license applications. [TR. p. 1553, Lines 4-10]. Diane also testified that she never participated in conversations or overheard same or even knew of the need for additional spectrum in the 1995-1996 time period. [TR. p. 1579, Line 17-Line 1 of p. 1580]. Diane further testified that she did not know that a FCC license application had been submitted in the name of O. C. Brasher until after the Net Wave petition. [TR. p. 1581, Line 11-Line 8 of p. 1582]. John Black told this Court that he never had any discussions with David regarding FCC licensing. [TR. p. 1649, Line 18-Line 12 of p. 1650]. David testified that he became employed by Metroplex in April of 1997. [TR. p. 906, Lines 21-22]. David further told this Court that he never knew and was not told by Ron that Ron had signed O. C. Brasher's name to a license and assignment application and submitted same to the FCC. [TR. p. 969, Line 24-Line 8 p. 970]. David also testified that in 1996 he was working full-time for IBM and had little or nothing to do with the business of Metroplex. [TR. p. 996, Line 9-Line 5 of p. 997]. David testified that the Net Wave petition came along a few months after he joined Metroplex and it concerned events in 1996 that David had no personal knowledge of except for his two licenses. [TR. p. 998, Line 25-Line 20 of p. 999]. This finding is further supported by the FCC's Exhibits 75 and 76 and the Judge's Exhibits 2, 3, and 4. These concern the FCC's

handwriting expert's reports by Ms. Bolsover wherein neither David nor Diane were identified or implicated as the writer(s) of any of the questioned dates and signatures on the questioned documents.

5. Neither David nor Diane were involved in the filing of the license application in the name of Ruth Bearden. In addition to the evidence set forth herein above in paragraph No. 4, this finding is also supported by Diane who testified that she did not know an FCC license application had been submitted in the name of Ruth Bearden until after the Net Wave petition. [TR. p. 1580, Line 2-Line 10 of p. 1581].
6. Neither David nor Diane were involved in the filing of license applications and/or assignments in the names of Jim Sumpter, Norma Sumpter, Melissa Sumpter or Jennifer Hill. In addition to the evidence set forth herein above in paragraph No. 4, this finding is also support by Ron's testimony that neither David nor Diane played a role in putting together the license applications for Jim Sumpter, Melissa Sumpter, Norma Sumpter or Jennifer Hill. [TR. p. 614, Line 11-Line 1 of p. 615]. Jennifer Hill told this Court that to her knowledge neither David nor Diane had any involvement in her or any of the Sumpter's license applications or assignments of same. [TR. p. 1107, Line 14-Line 12 of p. 1109]. Melissa Sumpter testified that in all her discussions concerning the Sumpters' applications and licenses she never talked to David and/or Diane and their names never came up in any connection with same. [TR. p. 1378, Lines 12-21]. Diane testified that she did not know Jim, Melissa, or Jennifer had FCC licenses until November, 2000, but she did know that Norma had been licensed back in 1996, 1997 or 1998. [TR. p. 1585, Lines 6-19 and

p. 1586, Lines 15-24]. Norma Sumpter testified that for the year of 1996 there were no entries for David and/or Diane in Jim's appointment book. [TR. p. 2184, Line 23-Line 2 of p. 2185]. Norma also testified that she only talked to Ron and Pat about the Net Wave petition not David and/or Diane. [TR. p. 2049, Line 22-Line 17 of p. 2051]. Melissa also testified that she never talked to David and/or Diane about her license. [TR. p. 1363, Line 22-Line 1 of p. 1364].

7. David Brasher did not execute a management agreement on behalf of O. C. Brasher. This finding is supported by the following evidence: Ron testified that David never signed a management agreement on behalf of O. C. Brasher and that Ron signed it and submitted it to the FCC but the submitted management agreement had a collation error that resulted in giving the appearance that David had signed it. [TR. p. 331, Lines 5-10 and P. 618, Lines 18-24]. This finding is further supported by the FCC's handwriting expert's reports that neither identified or implicated David as the writer of the signature of O. C. Brasher on a management agreement.
8. Neither David nor Diane forged any signatures on the license applications, assignments or any other documents relevant to this proceeding. There is absolutely no evidence in the record to even support the possibility of forgery by David or Diane. They were clearly exonerated of any forgery allegations by the testimony of the FCC's own handwriting expert, Ms. Bolsover.
9. Neither David nor Diane submitted any document to the FCC in response to inquiries that did not contain their full and truthful knowledge.

This finding is supported by the following evidence: Ron testified that he was

responsible for coordinating with the FCC and Metroplex's attorneys in regard to the enforcement action by the FCC. [TR. p. 530, Line 9-Line 4 of p. 532]. Ron testified that he gathered the documents that were included in the FCC's Exhibit 19. [TR. p. 496, Lines 4-14]. Pat testified that Ron, Pat, David and Diane all discussed the content of the first eleven (11) pages of the FCC's Exhibit 19 and that they all gathered documents in the Exhibit. [TR. p. 853, Line 1-Line 6 of p. 854]. Pat further testified that she and Ron discussed and prepared first draft of FCC Exhibit 17, not David and/or Diane [TR. p. 850, Line 23-Line 12 of p. 851]. Sue testified that Diane never asked nor instructed her to do anything that she considered or believed to be a deception of the FCC. [TR. p. 12-86, Lines 3-8]. Diane testified that none of the documents filed with the FCC in this matter were brought to her attention prior to the filing of same. [TR. p. 1554, Lines 14-25]. David testified that he very informally okayed the filing of FCC Exhibit 2, he just left it up to Ron since David had only been employed with Metroplex for about seven (7) months. [TR. p. 911, Line 16-Line 2 of p. 915]. David testified that the submissions by Metroplex to the FCC in 1998 were being handled by Ron and his attorneys. David does not remember even seeing FCC's Exhibits 16 and 17. [TR. p. 919, Line 6-Line 22 of p. 921]. David further testified that he did not participate in the substance of FCC's Exhibit 19, he was only the research person for Ron. David never saw Exhibit 19 in April of 1999 or any drafts thereof. [TR. p. 923, Line 5-Line 18 of p. 926]. David also testified that he signed management agreements with Metroplex for his two (2) licenses because he trusted his father and after receiving Net Wave petition believed

that some FCC issues needed to be straightened out. [TR. p. 930, Line 24-Line 24 of p. 934]. David further testified that he answered the FCC's Request for Admission #2 in the frame of mind and context that he was not an employee of Metroplex in June of 1996 therefore he denied it. [TR. p. 940, Line 15-Line 3 of p. 942]. David also testified that he answered the FCC's Request for Admission #19 in the frame of mind of what he knew in 1995, 1996, and 1997 time frame therefore he lacked specific knowledge to either admit or deny. [TR. p. 943, Line 13-Line 21 of p. 944]. David further testified that when he answered the FCC's Request for Admission #23 he had no knowledge of O. C. Brasher's assignment application. [TR. p. 945, Line 17-Line 23 of p. 946 and p. 950, Lines 3-12]. David also testified that when he answered the FCC's Request for Admission #29 he did so in the knowledge he had in the time frame of 1995, 1996 and 1997. [TR. p. 957, Line 24-Line 24 of p. 958]. Additionally, David testified that he neither gathered nor helped gather documents in the FCC's Exhibit 19 and he did not participate in the preparation of management agreements which were sent to the FCC, except for the signing of his own. [TR. p. 966, Line 22-Line 18 of p. 967]. David further testified that in April of 1997 he began learning Metroplex's business from the ground up and certainly knows a lot more about the two-way radio business now than when he started in April of 1997. [TR. p. 997, Line 12-Line 24 of p. 998]. David further testified that he relied on Ron to deal with the Net Wave petition and FCC associated matters through Ron's FCC attorneys in Washington, D.C. [TR. p. 998, Line 25-Line 20 of p. 999]. In answering the FCC's Requests for Admissions, David had the frame of mind of what he knew

in 1995 and 1996 and nobody told him that was an incorrect way to answer and he answered to the best of his ability. [TR. p. 1001, Line 25-Line 20 of p. 1002]. Further, the FCC's Request for Admissions were directed to David personally and he answered them by using what he knew, not Metroplex, Ron or Pat. [TR. p. 1019, Line 12-line 4 of p. 1021]. David never attempted to misled the FCC and tried to be honest and true in all responses to the FCC and the Court. [TR. p. 1021, Lines 20-25]. David answered the FCC's Request for Admissions by what he knew from 1996 to 1999. [TR. p. 1043, Lines 4-21].

III. CONCLUSIONS OF LAW

10. In view of the record evidence summarized and set forth hereinabove, it must be concluded that, neither David nor Diane had any involvement in the preparation of and/or submission of license applications to the FCC in the name of O. C. Brasher, Ruth Bearden, Norma Sumpter, Melissa Sumpter, and Jennifer Hill that occurred in the summer of 1996. It must also be concluded that the checks used to pay the filing fees for these applications were not signed by either David or Diane. The record evidence is overwhelming that David and/or Diane were hardly involved at all in the business of Metroplex in the summer of 1996, much less involved in the business of obtaining licenses to assist the business of Metroplex. The evidence clearly shows that neither David nor Diane signed any checks used to pay the filing fees for these license applications.
11. It must also be concluded, in view of the admitted evidence, that David did not execute a management agreement of behalf of O. C. Brasher in 1999 or at anytime.

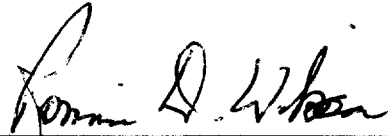
It is clear from the evidence that David did not sign O. C. Brasher's name, Ron did so. It only appeared to be David signing because of a collation error that occurred during preparation of the documents for submission to the FCC.

12. It must also be concluded that neither David nor Diane knew of or had reason to know of Ron's filing of license applications and assignments with the FCC in the names of O. C. Brasher, Ruth Bearden, Jennifer Hill, Norma Sumpter, Jim Sumpter, and Melissa Sumpter. The record evidence makes it perfectly clear that David and Diane had no involvement whatsoever with this conduct of Ron, even though they were officers of Metroplex. The record is clear that David and Diane as officers or employees were not involved with the licensing part of Metroplex's business during the relevant time periods.
13. It must also be concluded that neither David nor Diane forged any signatures on license applications, assignments or any other documents relevant to this proceeding. There is no evidence in the record to support even the possibility of forgery by Diane or David.
14. It further must be concluded that David and Diane were fully cooperative, informative and forthright in their submissions to the FCC in response to its inquiries of them. The record is void of any evidence that Diane and/or David made a false statement, much less made one with the intent to deceive. The record is further void of any evidence that Diane and/or David concealed information, evaded questions or failed to be anything but fully informative with the FCC, which obviously carried with it no intent to deceive.

David in his testimony gave a complete, truthful, rational and understandable explanation for his responses to the FCC's Request for Admissions. The record is clear that David at no time had any intent to deceive anyone much less the FCC.

15. Finally, in light of all of the foregoing, it must be concluded that the issues identified in the MOO must be resolved in favor of David and Diane and that no Order of Forfeiture be issued against David.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronnie D. Wilson", written over a horizontal line.

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DATED: September 10, 2001

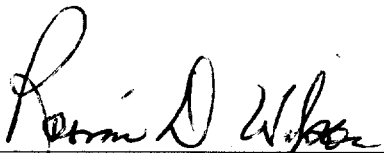
CERTIFICATE OF SERVICE

I, Ronnie D. Wilson, hereby certify that the original and copies of the foregoing Proposed Findings of Fact and Conclusions of Law in Case No. 00-156 was served by First Class Mail upon the below listed parties on this 10th day of September, 2001.

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